IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Gurjeet Kaur & Others Vs. State of Rajasthan
(D.B. CRIMINAL APPEAL NO.284/2003)

D. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 3-2-2003 in Sessions Case No.76/2001 passed by Sh. Govind Prasad Goyal, RHJS, Additional Sessions Judge (Fast Track) No.1, Bundi.

Date of Judgment: March 16, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE GUMAN SINGH

Mr. Kamlakar Sharma, for the appellants No.1to5.
Mr. R.L.Agrawal, for the appellant Raju @ Rajendra.

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

The appellants, six in number, along with Shoraj, were put to trial in Sessions Case No.76/2001 before learned Additional Sessions Judge (Fast Track) No.1, Bundi, who vide judgment dated February 3, 2003 convicted and sentenced them as under:-

Pappu @ Ranjeet Singh and Raju @ Rajendra:

U/s.302 IPC:

Both to suffer imprisonment for life and fine of Rs.1000/-, in default to further suffer simple imprisonment for two months.

U/s.307 IPC:

Both to suffer rigorous imprisonment for five years and fine of Rs.500/-, in default to further suffer simple imprisonment for

one month.

U/s.325 IPC:

Both to suffer rigorous imprisonment for two years and fine of Rs.100/-, in default to further suffer simple imprisonment for ten days.

U/s.324 IPC:

Both to suffer rigorous imprisonment for one year and fine of Rs.100/-, in default to further suffer simple imprisonment for ten days.

U/s.148 IPC:

Both to suffer rigorous imprisonment for one year and fine of Rs.200/-, in default to further suffer simple imprisonment for fifteen days.

Gurjeet Kaur, Shanti Bai, Bachchan Singh and Balwant Singh:

U/s.302/149 IPC:

Each to suffer imprisonment for life and fine of Rs.1000/-, in default to further suffer simple imprisonment for two months.

U/s.307/149 IPC:

Each to suffer rigorous imprisonment for five years and fine of Rs.500/-, in default to further suffer simple imprisonment for one month.

U/s.325/149 IPC:

Each to suffer rigorous imprisonment for two years and fine of Rs.100/-, in default to further suffer simple imprisonment for ten days.

U/s.324/149 IPC:

Each to suffer rigorous imprisonment for one year and fine of Rs.100/-, in default to further suffer simple imprisonment for ten days.

U/s.148 IPC:

Each to suffer rigorous imprisonment for one year and fine of Rs.200/-, in default to further suffer simple imprisonment for fifteen days.

The substantive sentences were ordered to run concurrently.

2. It is the prosecution case that on April 4, 2000 informant Mahaveer (Pw.13) submitted a written report (Ex.P-23) stating therein that

on the said day while he and Mukhtyar Singh (since deceased) were waiting for Thresher in the field of Mukhtyar Singh around 2.30 PM Raju, Bachchan Singh, Ranjeet Singh, Gurjeet Kaur, Balwant Singh, Santi Bai and one another armed with Lathi, Kulhadi and Sword came over there with the intention to kill Mukhtyar Singh. First of all Ranjeet singh inflicted Kulhadi-blow on the head of Mukhtyar Singh, thereafter Raju hit him by sword and Bachchan Singh and others hit him by lathi. Gurjeet Kaur and Santi were having country made pistols and were yelling to kill Mukhtyar. When Mahaveer tried to rescue Mukhtyar Pappu hit him by Kulhadi on his head and Raju hit him by sword on right hand, therefore he ran away. Thereafter with the help of Avtar Singh he removed Mukhtyar to hospital. On the basis of report the case was registered under sections 147, 148, 149 and 302 IPC and investigation commenced. Dead body was subjected to autopsy. Necessary memos were drawn. Statements of witnesses were recorded. The appellants were arrested and on completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) No.1 Bundi. Charges under sections 302, 302/149, 307, 325, 324 and 148 IPC were framed against the appellants, who denied the charges and claimed trial. The prosecution in support of its case examined as many as 21 witnesses. In the explanation under Sec.313 CrPC, the appellants claimed innocence. No witness in defence was however examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellants as indicated herein above.

3. We have heard the contentions raised before us and with the assistance of learned counsel perused the record.

4. We find that death of Mukhtyar Singh was homicidal in nature.

As per autopsy report (Ex.P-30) following ante mortem injury were found on the dead body:-

1. Incised wound 3" x ½" x Bone deep over Rt. parietal region.
2. Incised wound 2½" x ½" x Bone deep Lt. parietal region oblique placed.
3. Abrasion 1" x 1" size over Rt. ear.
4. Incised wound near Lt. arm obliquely placed 2" x 1" x Bone deep
5. Incised wound 2" x ½" x ½" over Lt. forearm obliquely placed.
6. Bruise 3" x 1½ over left knee joint with Fibula bone
7. Bruise 3" x 2" over left wrist joint with metacarpal bone
8. Bruise Rt. forearm 3" x 2" size
9. Abrasion 2" x 2" size over Rt. knee joint
10. Abrasion left shin to Tibia 3" x ½"
11. Bruise 6" x 1½" size over back thorax region obliquely placed
12. 6" x 1½" over lower joint of back
13. Bruise 4" x 1½" over chest region
14. Abrasion Rt. ankle joint 2" x 1½.

In the opinion of Dr. G.L.Nagar (Pw.16) the cause of death was coma as a result of head injury.

5. Injured Mahaveer (Pw.13) vide injury report (Ex.P-31) received following injuries:-

1. Lacerated wound over left eye lid upper
2. Abrasion ½" x ½" over Rt.arm
3. Incised wound 1½" x ½" x Bone deep over Rt. parietal region
4. Swelling 2" x 2" over left palm abrasion ½ x ½
5. Bruise over back 4" x 1"
6. Swelling 1" x 1" over left leg

6. Informant Mahaver (Pw.13) in his deposition stated that on April 4, 2000 he and Mukhtyar Singh were waiting for Thresher in the field

of Mukhtyar Singh. Around 2.30 PM Pappu @ Ranjeet Singh, Bachchan Singh, Raju, Balwant Singh, wife of Balwant Singh and his daughter Gurjeet and one another came and Pappu inflicted Kulhadi-blow at Mukhtyar Singh and Raju caused sword blow. Bachchan and others hit him by lathis. Balwant Singh and his daughter having country made pistols asked to kill Mukhtyar Singh. When he tried to rescue Mukhtyar, Pappu inflicted Kulhadi blow on his head and Raju inflicted sword blow on his right hand. Meanwhile Bittu and Jamna Lal reached there then the accused ran away. Other eye witnesses viz. Jamna Lal (Pw.1) and Mithu (Pw.19) supported the testimony of Mahaveer.

7. Having closely analysed the material on record we find that the fatal injuries received by the deceased and injured Mahaveer were assigned to appellants Pappu and Raju. It could however not be proved that there was pre-concert between the accused therefore nobody could be held guilty with the aid of section 149, 148 or 147 IPC. From the statements of witnesses it could be established beyond reasonable doubt that appellants Pappu and Raju shared common intention in inflicting injuries to deceased and Mahaveer. Charges under sections 325, 324 and 148 IPC however could not be established against them. The prosecution could not prove beyond reasonable doubt the charges under sections 302/149, 307/149, 325/149, 324/149 and 148 IPC against appellants Gurjeet Kaur, Shanti Bai, Bachchan Singh and Balwant Singh. The manner in which they were joined in the FIR creates doubt about their participation in the crime. Possibility of their over implication in the case cannot be ruled out.

8. For these reasons, we dispose of the instant appeal in the following terms:-

(i) We allow the appeal of appellants Gurjeet Kaur, Shanti Bai, Bachchan Singh and Balwant Singh and acquit them of the charges under sections 302/149, 307/149, 325/149, 324/149 and 148 IPC. These appellants are on bail they need not surrender and their bail bonds stand discharged.

(ii) We instead of Sections 302 and 307 convict the appellants Pappu @ Ranjeet Singh and Raju @ Rajendra under sections 302/34 and 307/34 IPC and sentence each of them under section 302/34 to suffer life imprisonment and fine of Rs.1,000/- in default to further suffer two months rigorous imprisonment and under section 307/34 IPC rigorous imprisonment for five years and fine of Rs.500/- in default to further suffer one month simple imprisonment. Sentences are ordered to run concurrently. We however acquit the appellants Pappu @ Ranjeet Singh and Raju @ Rajendra of the charges under sections 325, 324 and 148 IPC.

(iii) The impugned judgment of learned trial court stands modified as indicated above.

(Guman Singh),J. (Shiv Kumar Sharma)J.

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